IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Crl.Misc.No.51558-M of 2006

Date of Decision: May 2 , 2007

Tarlok Singh ….Petitioner

Versus

State of Punjab and another ….Respondents

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CORAM HON'BLE MR. JUSTICE S. D. ANAND

PRESENT: Mr.JS Thind, Advocate for the petitioner.

Mr. BS Sra, Deputy Advocate General, Punjab.

Mr. GS Wasu, Advocate for respondent No.2.

JUDGMENT

The following uncontroverted facts are apparent from the file:

The petitioner entered into an agreement to sell with Manohar Lal son of Nihal Chand (complainant in the relevant FIR), vide which the latter agreed to sell 31 Kanals 17 Marlas land to the former @ Rs.1,82,000/- per acre. The sale-deed was to be got registered on 14.6.2004. The possession of the land was already with the petitioner.

Before that date approached, the petitioner filed an application on 24.2.2004 for the correction of Khasra girdawari entries with effect from the year 2003. That application was allowed by Assistant Collector IInd Grade, Jalalabad on 31.3.2004.

Manohar Lal challenged that order before Assistant Collector Ist Grade, who (Assistant Collector Ist Grade) allowed the appeal without even serving a notice thereof upon the petitioner. A revision petition filed by the petitioner before the Commissioner against the impugned order passed by Assistant Collector Ist Grade is pending.

Complainant Manohar Lal tried to wriggle out of agreement aforementioned. The petitioner, with a view to stall further sale of that land, filed a civil suit for permanent injunction for the restraint of Manohar Lal, complainant from interfering in the possession of the petitioner on that land and also from alienating that land in any manner to any person other than the petitioner. That petition is being contested by Manohar Lal.

On 14.6.2004, the petitioner appeared before the Sub Registrar, Jalalabad. However, Manohar Lal complainant did not turn up and the sale deed could not be executed and got registered. The petitioner got his presence noted by filing an affidavit before the Sub Registrar, Jalalabad on 14.6.2004. The petitioner also served a legal notice upon the complainant requiring the latter to perform his part of the contract under the impugned agreement but there was no response from his side. It impelled the petitioner to file a civil suit for specific performance on an agreement dated 17.3.2004. A notice of that suit has been issued to the complainant aforementioned.

Thereafter, Manohar Lal lodged FIR No.108 dated 3.8.2004, under Sections 420/465/468/471/120-B of the Indian Penal Code against the

petitioner and some others on 4.8.2004. The petitioner filed Crl.Misc.No.37635-M of 2004 and was allowed interim anticipatory bail.

It was thereupon that the Sub Divisional Magistrate, Jalalabad initiated proceedings under Section 145 of the Code of Criminal Procedure on the basis of a calendar filed by the police of Police Station City Jalalabad. The Sub Divisional Magistrate also appointed a receiver in terms of the provisions contained in Section 146 of the Code of Criminal Procedure.

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure for the quashment of order dated 29.9.2004 (passed by the SDM under Section 145 of the Code) and order dated 18.8.2006 (passed by the SDM under Section 146 of the Code). The former order is Annexure P13, while the latter order is Annexure P18. The petition is contested on behalf of the respondent.

I have heard Mr.JS Thind, Advocate for the petitioner, Mr.BS Sra, Deputy Advocate General, Punjab and Mr.GS Wasu, Advocate for respondent No.2 and have carefully gone through the records.

It cannot be disputed that there is adequate material obtaining on the file to prove that two civil suits filed by petitioner Tarlok Singh against respondent No.2 - Manohar Lal are pending consideration of civil court. While averring that it is he who is in possession of the land, the petitioner has filed the former litigation in order to restrain Manohar Lal, complainant/respondent from interfering in his possession on the land in suit and also from alienating it in favour of anybody other than the petitioner himself. In the latter litigation, the relief sought by the petitioner is for the specific performance of the impugned agreement. Both the civil causes aforementioned, are pending consideration of civil court. In the light thereof, the Sub Divisional Magistrate,

Jalalabad could not have validly passed the impugned orders dated 29.9.2004 and 18.8.2006. It is established law that the proceedings under Section 145 of the Code would not be sustainable if the matter is pending consideration of the Civil Court. Reference, in support of that view, may be made to Ram Sumer Puri Mahant Versus State of U.P. And others, AIR 1985 SC 472, Ranbir Singh Versus Dalbir Singh, 2002(2) RCR (Criminal) 275 and Gian Chand and others Versus State of Haryana and others, 2005(3) RCR (criminal) 958. The first two rulings were rendered by the Apex Court; while the third was rendered by a Single Bench of this Court. In all those judicial pronouncements, it was held that if a civil litigation is pending qua the controversy in respect of the possession of a property, the initiation of a parallel criminal proceeding under Section 145 of the Code is not justified.

In the light thereof, the proceedings under Section 145/146 of the Code pending in the Court of Sub Divisional Magistrate, Jalalabad shall stand quashed. The orders dated 29.9.2004 and 18.8.2006 of Sub Divisional Magistrate, Jalalabad shall also, consequently, stand quashed.

Disposed of accordingly.

(S. D. ANAND)
JUDGE

May 2, 2007
SRM